THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on :02.07.2007

WP(C) No.18188/2006

AMITY UNIVERSITY UTTAR PRADESH ...Petitioner

- versus -

UNION OF INDIA & ORS. ...Respondents

Advocates who appeared in this case:

For the Petitioner	:	Mr Neeraj Kaul, Sr. Advocate with Mr Vinay Garg and Mr Rajesh Yadav
For the Respondent No.1	:	Mr Mukesh Anand with Mr Shailesh Tiwry and Ms Zeba Tarannum
For the Respondent No.2	:	Mr Vikas Singh, ASG with Mr Amitesh Kumar
For the Respondent No. 3	:	Mr Ved Prakash Garg

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J

1. This writ petition is directed against the inaction of the respondent No.2 [University Grants Commission] (UGC) in not including the petitioner in the list maintained by it of universities as defined under Section 2(f) of the University Grants Commission Act, 1956 (hereinafter referred to as the UGC Act). The writ petition is also directed against the respondent No.3 (Indian Nursing Council) inasmuch as the respondent No.3 has not granted approval for

recognition to the petitioner university under the Indian Nursing Council Act, 1947 on the ground that the petitioner university is not included in the list maintained by the University Grants Commission.

2. The UGC has a website on the internet (www.ugc.ac.in). Under the category of "Inside Higher Education" there is a sub-category — "universities". The list of universities can be examined State-wise. The petitioner is a university in Uttar Pradesh. The list of universities in respect of Uttar Pradesh does not include the petitioner's name. The list includes various other universities such as a central university (funded by UGC), deemed university (not funded by UGC), deemed university (funded by UGC), state university (funded by UGC), state university (not funded by UGC), state private university (not funded by UGC) and Institute of National Importance (not funded by UGC).

3. The grievance of the petitioner is that because of the non-inclusion of the petitioner in the said list of universities for Uttar Pradesh, the petitioner is suffering serious consequences. As an illustration, it has been pointed out by Mr Neeraj Kaul, the learned senior counsel appearing on behalf of the petitioner, that students of the petitioner university have been denied admission by foreign universities in higher courses on the ground that the petitioner university is not in the UGC list. Copies of letters from such students have

been placed on record at pages 73-77 of the paper book. The Institute of Chartered Accountants of India had denied registration to one of the students of the petitioner university on the ground that he is ineligible because he is a student of an unrecognized university. The Indian Nursing Council has refused recognition to the petitioner because of want of "UGC Notification". A copy of a letter dated 26.06.06 from the said Council returning the inspection fees is annexed as Annexure P-5 to the petition. Organizations in USA dealing with equivalence of degrees have refused to entertain the status of the petitioner university on account of the fact that it is not listed with the UGC and is not included in the list of universities maintained on the UGC website. Copies of e-mails to this effect are placed at pages 115-116 of the paper book.

4. The petitioner is, therefore, aggrieved by the non-inclusion of its name in the list of universities maintained by the UGC in its website. It is in this context that the petitioner has prayed for a writ, direction or order in the nature of mandamus directing the respondent No.2 (UGC) to incorporate the name of the petitioner in the list of universities as maintained by it. A further prayer has been sought in respect of the Indian Nursing Council to consider the application of the petitioner for grant of recognition to its qualification under the Indian Nursing Council Act without insisting for the Notification listing the petitioner in the list maintained by UGC. It is also prayed that a writ, direction or order in the nature of mandamus be issued declaring the degree awarded by

the University as a degree specified under Section 22 of the UGC Act without listing of the university by the UGC.

5. Looking at the contentions and the grievances of the petitioner, it is apparent that the main issue in this writ petition is whether the UGC is within its rights not to include the name of the petitioner university in the non-statutory list maintained by it of universities falling within the meaning of Section 2 (f) of the UGC Act.

6. It has been contended by Mr Kaul that the petitioner university clearly falls within the definition of "University" given in Section 2(f) of the UGC Act. Section 2(f) reads as under:-

> "2. **Definitions**. — In this Act, unless the context otherwise, requires,-
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> (a) xxxxxxxx
>
> (b) xxxxxxxx
>
> (c) xxxxxxxx
>
> (d) xxxxxxxx
>
> (e) xxxxxxxx
>
> (f) "**University**" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act."

Mr Kaul further submitted that the petitioner university was established and incorporated under a State Act, namely, the Amity University Uttar Pradesh Act, 2005. Therefore, according to him, it was a university falling under Section 2(f) of the UGC Act. He submitted that this in itself was sufficient and did not require further consideration of the inclusive definition which only pertains to other institutions which could, in consultation with the university concerned, be recognized by the Commission in accordance with the regulations made in this behalf under the UGC Act. He submitted that the moment a university was incorporated and established by a State Act, it was a university as defined under Section 2(f) of the UGC Act. He further submitted that the list of universities that is being maintained by the UGC on its website is, admittedly, a list of universities falling under Section 2(f) of the UGC Act. In this context, he referred to paragraph 13 and 14 of the counter-affidavit filed on behalf of the UGC which read as under:-

> "13. That it is respectfully submitted that UGC maintains a list of Universities recognized under Section 2(f) of the University Grants Commission Act, 1956. A new private university is included in the said list after evaluating the physical and academic infrastructure and other aspects pertaining to maintenance of standard of higher education with help of an expert committee. The UGC while considering the request of a private University also requires certain information from the concerned University.
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> 14. That it is respectfully submitted that for inclusion of a private University under Section 2(f) of the UGC Act, 1956, the UGC deputes an expert Committee for physical verification of academic and physical infrastructure of the

> concerned University and all other aspects for maintenance of standard of education. It is submitted that thereafter, the report of the expert committee is considered by the Commission and after the approval of the Commission, the name of such private University is included in the list of recognized University being maintained by the UGC."

It was submitted that the list pertains to universities falling under Section 2(f) of the UGC Act. The recognition, however, mentioned in the extracted portion of the counter-affidavit would only relate to the inclusive part of the definition of Section 2(f) of the UGC Act and would pertain to institutions which are not universities established and / or incorporated under a Central Act or a Provincial Act or a State Act.

7. Mr Kaul submitted that the expression "established or incorporated" appearing in Section 2(f) of the UGC Act has to be read as "established and incorporated" in view of the Supreme Court decision in the case of ***Prof. Yashpal and Another v. State of Chhattisgarh and Others: (2005) 5 SCC 420*** (see paragraph 59 thereof) to the following effect:-

> "..... We are of the opinion that having regard to the constitutional scheme and in order to ensure that the enactment made by Parliament, namely, the University Grants Commission Act is able to achieve the objective for which it has been made and UGC is able to perform its duties and responsibilities, and further that the State enactment does not come in conflict with the Central legislation and create any hindrance or obstacle in the working of the latter, it is necessary to read the expression "established or incorporated" as "established and

> incorporated" insofar as the private universities are concerned."

It was submitted by Mr Kaul that there is no difficulty with this interpretation inasmuch as the petitioner has been both established and incorporated by the Amity University Uttar Pradesh Act, 2005. The preamble of this Act reads as under:-

> "An Act to establish and incorporate a teaching University sponsored by Ritnand Balved Education Foundation, New Delhi at Gautam Buddha Nagar in Uttar Pradesh and to provide for matters connected therewith or incidental thereto."

Section 3 of the said Act reads as under:-

> "3. **Establishment of the University**.— (1) There shall be established at Gautam Buddha Nagar, Uttar Pradesh a University by the Foundation in the name of the Amity University Uttar Pradesh.
>
> (2) The University shall be a body corporate."

8. In the context of the aforesaid provisions, it was submitted by Mr Kaul that the petitioner university was established and incorporated by the enactment itself and, therefore, the petitioner was a university as contemplated under section 2 (f) of the UGC Act. It was further contended that the Amity University Uttar Pradesh Act, 2005 itself required stringent conditions for the establishment of the university. The conditions were prescribed in Section 4 with regard to possession of a minimum 50 acres or more of contiguous land. It was also necessary to construct, on the said land, buildings of at least 24,000

sq. mts carpet area out of which at least 50% was to be used for academic and administrative purposes. It was incumbent upon the university to install equipments in offices and laboratories worth a minimum of Rs.5 crores in the said buildings. The university was required to appoint teachers and establish infrastructure of the departments/ schools for the purpose of teaching and / or research in at least seven subjects as per standards laid down by the UGC. There were other conditions also stipulated. Section 5 of the Act required that the university shall start operation only after the State Government issues to the Foundation a letter of authorization for the commencement of the functioning of the University. The said Section also provided that the State Government shall issue the letter of authorization on receipt of an unambiguous affidavit along with documents by the Foundation to the effect that all conditions referred to in Section 4 had been fulfilled. Section 8 of the Amity University Uttar Pradesh Act, 2005, *inter alia*, provided that the university shall ensure that the academic standards of the courses offered by it would be in accordance with the guidelines of the UGC and that the teacher-student ratio shall also be in accordance with the guidelines of the UGC. Reading the aforesaid provisions, Mr Kaul submitted that the petitioner was not a mere "Shell" or "Paper entity" but had been duly established and incorporated with full infrastructure and functionality in the sense contemplated under Section 2(f) of the UGC Act and by the Supreme Court in ***Prof. Yashpal*** *(supra)*. There is no dispute also with the jurisdiction of the UGC in laying down the standards of

education and or in maintaining the same. That is not disputed by the petitioner. The only question here, according to Mr Kaul, is the arbitrary, discriminatory and unreasonable exclusion of the petitioner from the list of universities notified on the website of UGC.

9. It was pointed out that in the context of the conditions prescribed under Section 4 of the Amity University Uttar Pradesh Act, 2005, the petitioner university had in possession more than 60 acres of land. The university already had 1,10,000 sq. mts of built up area and a further 70,000 sq. mts was under construction. The petitioner university had also installed equipments worth approximately Rs.20 crores. The petitioner university had also appointed teachers and established an infrastructure far in excess of the requirements indicated in Section 4 of the said Act. After fulfilling the conditions stipulated in Section 4 of this Act, an affidavit had been filed as indicated in Section 5 and the State Government through its letter dated 31.05.2005, issued by the Secretary, Higher Education Department, Government of Uttar Pradesh, granted approval for issuance of the authorization letter for the commencement of functioning of Amity University. A copy of this letter is annexed as Annexure P-1 to the petition. It was also pointed out in the petition that the petitioner has also established a permanent endowment fund of Rs.2.25 crores as against the requirement of Rs. 1 crore under Section 40(1) of the Amity University Uttar Pradesh Act, 2005. Apart from all this, it is stated that the

petitioner university has campuses at Gautam Budh Nagar and Lucknow where the petitioner is imparting higher education in many fields including Nanotechnology, Biotechnology, Forensic Science, Management and Engineering and approximately 15,400 students had been enrolled and were studying in various courses conducted by the petitioner university. It is also mentioned in the petition that the Government of India, Ministry of Science & Technology has accorded recognition to the petitioner university as a Scientific and Industrial Research Organization under the scheme of recognition of Scientific and Industrial Research Organizations. The letter of recognition was issued by the Government of India, Ministry of Science & Technology on 06.03.2006. The sum and substance of the reference to all this, according to Mr Kaul, is that the petitioner university is not a shell or a hollow concern. It is not one of those universities which were frowned upon by the Supreme Court in the case of ***Prof. Yashpal*** *(supra)* and which had sprouted in the State of Chhattisgarh under the provisions of Section 5 and 6 of the Chhattisgarh Private Universities Act, 2004. It was contended by Mr Kaul that in the case of ***Prof. Yashpal*** *(supra)*, Sections 5 and 6 of the Chhattisgarh Act were under challenge as they permitted incorporation or establishment of a university through State Government Notifications on mere proposals on paper without establishment of any infrastructure or teaching facilities etc. In ***Prof. Yashpal*** *(supra)*, it was noted that under the provisions of Section 5 & 6 of the Chhattisgarh Act about 112 universities were established within a year and

many of them had no building or campuses and were running from one room tenements. It is in this context that Sections 5 & 6 of the Chhattisgarh Act were declared as unconstitutional by the Supreme Court in ***Prof. Yashpal*** *(supra).* The situation is entirely different in the present case because, firstly, the petitioner university has been incorporated and established by a separate State Act. Secondly, the petitioner university is not the kind of university which was under the scanner in ***Prof. Yashpal*** *(supra)*. It has full infrastructural facilities and, in fact, beyond the requirements of the Amity University Uttar Pradesh Act, 2005, as indicated above.

10. Mr Kaul further submitted that the petitioner after having been incorporated and established, made an application on 01.06.2005 to the UGC for inclusion of its name in the list of universities maintained by it. Thereafter, the UGC constituted an expert committee and required the petitioner to submit information in the prescribed format. The letter was issued by the UGC on 28.07.2005 notifying the list of members of the UGC expert committee to consider the proposal for inclusion of its name under Section 2(f) of the UGC Act. The information for enlistment of the petitioner university under Section 2(f) of the UGC Act was provided by the petitioner finally by the letter dated 20.02.2006 (Annexure P-7) and it was requested that the date of visit of the expert committee be indicated. However, it was pointed out by Mr Kaul that although the committee had been constituted to carry out the inspection and the

request had been made, neither the inspection was carried out nor the name of the petitioner was included in the list of universities maintained by it. It is because of this complete inaction on the part of the UGC that the present writ petition has been filed. He submitted that on the one hand the inspection was not being carried out and on the other hand, the UGC was contending that until and unless the inspection is carried out the petitioner's name cannot be included in the said list. Ultimately, Mr Kaul submitted that the only requirement for a university to fall within Section 2(f) of the UGC Act was that it should have been incorporated and established by or under a Central Act, a Provincial Act or a State Act. The petitioner university was incorporated and established by a State Act and, therefore, there was no reason as to why the UGC did not include the name of the petitioner in the list of the Section 2(f) universities maintained by it on its website. This is apart from the question that the UGC in terms of UGC Act and provisions made thereunder can carry out periodic inspections and point out deficiencies which need to be rectified from time to time. No such inspection had been carried out by the UGC nor had any deficiencies been pointed out which required rectification. Therefore, the non-inclusion of the petitioner's name in the list is clearly unreasonable, arbitrary and discriminatory and is working to the detriment of the university and its students.

11. On behalf of the UGC, Mr Vikas Singh, the learned Additional Solicitor General, submitted that the prime issue involved in this writ petition from his point of view was whether the petitioner had any enforceable right to seek a mandamus from this Court for getting its name included in the non-statutory list maintained on the website of the UGC. The related issues were whether the UGC was permitted to maintain a list of those universities which the UGC had inspected and found to be conforming to the standards prescribed by it? The question also was whether the UGC could insist on inspecting a new university to ensure that the same had been properly established before including the name of such a university in the list maintained by the UGC on its website? He submitted that the UGC Act had been enacted to make provisions for the coordination and determination of standards in universities and the said Act has been enacted in exercise of powers conferred by Entry 66 of List I of the VIIth Schedule to the Constitution of India. According to Mr Vikas Singh, the answers to the questions posed by him are to be found in the interplay of Entry 32 List II and Entry 66 List I of the VIIth Schedule to the Constitution of India. According to him, the Supreme Court in the case of ***Gujarat University, Ahmadabad v. Krishna Ranganath Mudhokar & Ors. : 1963 Suppl. (1) SCR 112,*** in the context of Gujarat University, held that a field occupied by the Central List (List I) was not available for legislation by the State, even if no Central Law covers the same. In this context he submitted that in the instant case, the field is occupied by the Central Act, that is, the

UGC Act and, therefore, no part of the said field could be occupied by a State enactment. Consequently, the power to determine as to whether a university is up to the requisite standard or not, is exclusively vested in the UGC and no State enactment can confer the said power onto the State as that would amount to denuding the UGC of its authority in the matter. He also referred to the Supreme Court decisions in the case of **Osmania University Teachers' Association v. State of Andhra Pradesh and Anr.: 1987 (4) SCC 671, State of T.N. and Anr. v. Adhiyaman Educational & Research Institute and Ors.: 1995 (4) SCC 104** and **State of A.P. v. K. Purushotham Reddy and Ors.: 2003 (9) SCC 564.** He submitted that the power of the UGC to ensure that the proper standards are being maintained by the universities also includes the power to ensure that institutions are not set up without the requisite facility. He then referred to the decision of the Supreme Court in the case of ***Prof. Yashpal*** *(supra)* to submit that a private university even though incorporated and established by the State Government cannot be considered to be validly established unless the standards being maintained in such private universities are verified and approved by the UGC. According to Mr Vikas Singh, the ratio of the judgment in ***Prof. Yashpal*** *(supra)* is that a private university, although it may have been incorporated and established by a State Government, would not be considered as a validly established until and unless it has been duly inspected and verified by the UGC. It was contended that the State legislature cannot take up the functions which are exclusively vested in the

UGC. He, therefore, contended that the petitioner did not have any enforceable right to seek a mandamus from the Court for getting its name included in the non-statutory list maintained on the website of the UGC because it was well within the rights of the UGC not to include the name of the petitioner university until and unless it was inspected and verified by the UGC.

12. In rejoinder, Mr Kaul reiterated that he has no difficulty with the proposition that the UGC has jurisdiction in laying down the standards of higher education as well as in ensuring the maintenance of the standards. He also submitted that there is no conflict between the powers of the UGC under the Central Act and of the provisions of the State Act (The Amity University Uttar Pradesh Act, 2005). He also reiterated that the decision of the Supreme Court in the case of ***Prof. Yashpal*** *(supra)* does not at all relate to a university such as the petitioner university. Sections 5 and 6 of the Chhattisgarh Act, which had been struck down by the Supreme Court, permitted the State Government to establish universities by a notification. In the present case the State by a legislative enactment has established the petitioner university. It has not been instituted through a notification. The thrust of the Supreme Court in the case of ***Prof. Yashpal*** *(supra)* was that universities which have no infrastructure and are only in the nature of a "shell" should not be permitted to function and they must be established in the true sense and for this purpose the UGC had full rights to oversee that the establishment was proper. However, in

the present case the petitioner university was established by a specific legislative enactment requiring rigorous conditions with regard to infrastructure. Those conditions have been met and the petitioner university is not the kind of the university which was frowned upon by the Supreme Court in the case of ***Prof. Yashpal*** *(supra)*. If there are any shortcomings or deficiencies, it is always open to the UGC to inform the petitioner university of its shortcomings and to require the petitioner to remove the shortcomings / deficiencies. Under Section 26 of the UGC Act, regulations have been framed which include the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003. These Regulations and particularly Regulation 3 thereof clearly provide for the UGC to inspect such private universities which have been established by a separate State Act. The UGC after such inspection can ask the private university to remove the shortcomings. The UGC is also empowered to carry out periodic inspections as provided by Regulation 4 of the 2003 Regulations. The consequences of violations are given in Regulation 5, which include the power of the UGC to pass an order prohibiting the private university from offering any course for the award of the first degree and/ or the post-graduate degree / diploma, as the case may be, till the deficiency is rectified. Mr Kaul also submitted that during the pendency of the present writ petition, a show cause notice was issued to the petitioner in January, 2007 indicating that the petitioner was running off-campus centres, that the petitioner had no AICTE approval and directions given in the case of

Prof. Yashpal *(supra)* were not being complied with. He submits that this was replied to by stating that the petitioner has no off-campus centres and that it does not require AICTE approval and that no guidelines applicable to the university were issued in the case of ***Prof. Yashpal*** *(supra)* and as such there was no question of such guidelines being violated. It was further indicated in the reply that the petitioner university had complied with all the norms and standards as laid down by the UGC. Finally, it was submitted by Mr Kaul that no inspection had been carried out by the UGC and no deficiencies had been pointed out till date.

13. Having set out the arguments and counter-arguments of the counsel in detail, it appears that, first of all, there is no dispute with regard to the power and jurisdiction of the UGC in laying down standards for higher education and also to ensure the maintenance of such standards. There is also no need for any debate on the issue as to whether the expression used in Section 2(f) of the UGC Act ought to read as "established or incorporated" or as "established and incorporated". This dispute has been settled by the Supreme Court in the case of ***Prof. Yashpal*** *(supra)* by holding that the expression has to be read as "established and incorporated". There is also no difficulty with the fact that the Amity University Uttar Pradesh Act, 2005 by its provisions both incorporated and established the petitioner university. There is, therefore no necessity, in my view, to examine the question of interplay between the provisions of Entry 32

List II and Entry 66 List I of the VIIth Schedule to the Constitution of India. The only issue that arises for consideration in the present case is whether the petitioner is entitled to a direction that its name should be included in the non-statutory list maintained on the website of the UGC.

14. There is no dispute that the UGC maintains a non-statutory list of universities, which according to it, fall under the definition provided in Section 2(f) of the UGC Act. A plain reading of the said provision clearly indicates that all universities, which have been established and incorporated by a Central Act or a Provincial Act or a State Act, would be universities contemplated under Section 2(f) of the said Act. The latter part of the definition, which gives an inclusive meaning to the word university, relates to institutions other than the universities which have been established and incorporated by a Central Act or a Provincial Act or a State Act. The recognition of the University Grants Commission is relatable to such institutions and not to the universities which are referred to in the first part of the definition. It is of course within the power of the University Grants Commission to undertake inspection of any university falling within Section 2(f) of the UGC Act and to require any such university to remove any shortcomings / deficiencies, if found, during the inspection. It is also open to the UGC to take consequential action as stipulated in Regulation 5 of the 2003 Regulations in respect of private universities incorporated and established by such enactments. However, I find that there is no provision

either in the UGC Act or in the Regulations that has been referred to by the counsel for the parties, which require a recognition/ approval of the UGC before a university is regarded as one under Section 2(f) of the UGC Act. All that is necessary is that the university must have been incorporated and established by virtue of a Central Act, a Provincial Act or a State Act. This condition is clearly satisfied in the case of the petitioner university by virtue of the enactment of the Amity University Uttar Pradesh Act, 2005 and by the petitioner's compliance with the conditions stipulated in sections 4 and 5 thereof.

15. The next issue that arises is whether the petitioner can claim inclusion of its name in the non-statutory list maintained by the UGC on its website. Normally, the petitioner would not have had any right to have its name included in a non-statutory list. However, the exclusion of the petitioner from the list maintained by the UGC on its website has serious consequences, which have been detailed above. Therefore, the non-inclusion of the petitioner's name in the list works to the detriment of the petitioner. On the one hand, the UGC has not inspected the petitioner university for over two years despite repeated requests and on the other hand, it is taking the excuse of non-inspection as a ground for denying the petitioner its legitimate place in the list maintained by it. It is beyond the pale of any debate that the UGC is a public body and performs public functions and although it has discretion in

maintaining or not maintaining a list of universities, once the discretion is exercised, it must be reasonable and not arbitrary. It was open to the UGC not to maintain a list of universities falling under Section 2(f) of the UGC Act but having exercised the option of maintaining such a list, it is not open to the UGC to pick and choose and arbitrarily and unreasonably deny inclusion of the petitioner's name in the said list even though it falls within the definition of the word "university" given in Section 2(f) of the UGC Act. This Action on the part of the UGC is detrimental to the interests of the petitioner as well as to the students of the petitioner university. The instances have already been mentioned above whereby students have been denied admission in foreign universities in higher courses. The Institute of Chartered Accountants of India has denied registration to the students of the petitioner university and the Indian Nursing Council has refused recognition merely on the ground that the petitioner's name is not to be found in the list maintained by the UGC on its website.

16. It is in these circumstances that I deem it proper to direct the UGC to include the name of the petitioner university in the list of universities, as per Section 2(f) of the UGC Act that is being maintained by it on its website. It is, of course, open to the UGC to carry out periodic inspections of the petitioner university and to point out deficiencies, if any, and to require the petitioner

university to remove those shortcomings/ deficiencies as also to take consequential action in case the deficiencies / shortcomings are not removed.

17. In view of the direction to include the petitioner's name in the said list maintained by UGC, the other prayers, which relate to situations of non-inclusion in the list become irrelevant and no other directions would be necessary. This writ petition is allowed to the extent indicated above. No order as to costs.

BADAR DURREZ AHMED
(JUDGE)

July 02, 2007
SR